



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 54, and 301

RIN 1545-BQ98

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2510, 2520, and 2550

RIN 1210-AC09

PENSION BENEFIT GUARANTY CORPORATION

**29 CFR Parts 4000, 4007, 4010, 4041, 4041A, 4043, 4050, 4062, 4063, 4204, 4211, 4219,
4231, 4245, 4262, and 4281**

RIN 1212-AB58

Request for Information – SECURE 2.0 Section 319 – Effectiveness of Reporting and Disclosure Requirements

AGENCY: Internal Revenue Service, U.S. Department of the Treasury; Employee Benefits
Security Administration, U.S. Department of Labor; Pension Benefit Guaranty Corporation.

ACTION: Request for information.

SUMMARY: The Department of the Treasury (Treasury Department), the Employee Benefits
Security Administration (EBSA) of the U.S. Department of Labor (Labor Department), and the
Pension Benefit Guaranty Corporation (PBGC) are publishing this Request for Information to
develop a public record for purposes of the directive in the SECURE 2.0 Act of 2022 (SECURE
2.0). Specifically, this Request for Information addresses section 319 of SECURE 2.0, requiring
that these agencies review the existing reporting and disclosure requirements for certain
retirement plans under the Employee Retirement Income Security Act of 1974, as amended
(ERISA) and the Internal Revenue Code (Code) that are applicable to each agency. Following

this review, the agencies are to report to Congress, no later than December 29, 2025, concerning the effectiveness of the reporting and disclosure requirements. The report will include recommendations on consolidating, simplifying, standardizing, and improving such requirements with the dual goals of reducing compliance burdens and ensuring plan participants’ and beneficiaries’ timely receipt and better understanding of the information they need to monitor their plans, prepare for retirement, and get the benefits they have earned. The report will also consider how participants and beneficiaries are providing preferred contact information, the methods by which plan sponsors and plans are furnishing disclosures, and the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures. Consistent with the directive in section 319 of SECURE 2.0, this Request for Information focuses generally on the overall effectiveness of the reporting and disclosure frameworks in ERISA and the Code. Responses to this Request for Information will inform the agencies in preparation of the required report to Congress and in any future action taken by the agencies to enhance the effectiveness of existing requirements.

DATES: To be assured consideration, comments must be received at one of the following addresses no later than [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Written comments, identified by RIN 1210–AC09, may be submitted to one of the addresses specified below. Any comment that is submitted will be shared with the Department of the Treasury, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation. Please do not submit duplicates.

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Please address to “Attention: Request for Information – SECURE 2.0 Section 319 – Effectiveness of Reporting and Disclosure Requirements.” Office of Regulations and

Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, at www.regulations.gov, on the Department of Labor's website at www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments, and at the Public Disclosure Room, EBSA, U.S. Department of Labor, Suite N-1515, 200 Constitution Avenue NW, Washington, DC 20210. Comments may also be accessed from PBGC's website at www.pbgc.gov.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis, Office of Regulations and Interpretations, EBSA, Labor Department, (202) 693-8500. Jamie Dvoretzky, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (CC:EEE)), IRS, Treasury Department, at (202) 317-4102. David Simonetti, Legal Policy Division, Office of the General Counsel, PBGC, (202) 229-4362.

SUPPLEMENTARY INFORMATION:

I. Background.

SECURE 2.0 includes provisions amending ERISA and the Code and requiring the Labor Department, the Treasury Department, and PBGC (each an Agency and, together, the Agencies) to undertake specified statutory, regulatory, and review requirements and, in some cases, to report to Congress based on their findings.¹ A number of these provisions relate to the reporting

¹ The SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (2022) (SECURE 2.0).

and disclosure requirements of ERISA and the Code. For example, on August 11, 2023, the Labor Department published a separate request for information focusing on ten specific sections of SECURE 2.0 that amend ERISA or otherwise impact, directly or indirectly, ERISA's reporting and disclosure requirements.² At that time, the Labor Department stated its intention to move forward in the short term with a separate initiative, in coordination with the Treasury Department and PBGC, to formally solicit input from stakeholders in response to section 319 of SECURE 2.0.

Section 319 of SECURE 2.0 includes a wide-ranging directive to the Agencies to review each Agency's existing reporting and disclosure requirements under the Code and ERISA for retirement plans specified in section 319 of SECURE 2.0.³ After this review, and in consultation with a balanced group of participant and employer representatives, the Agencies are to report to Congress on the effectiveness of these reporting and disclosure requirements, including recommendations to consolidate, simplify, standardize, and improve such requirements. This review is to be expansive in scope. In the Agencies' view, the review calls for generalized questions about how plans can (a) efficiently furnish valuable information to the Agencies, and (b) best communicate information to workers and former employees, who have widely varying backgrounds and expertise, that would enable them to effectively obtain, understand, and use information about their plans and to plan for retirement. The overarching theme of "effectiveness" will be explored in the context of both the reporting and disclosure requirements under the jurisdiction of the three Agencies. The public is directed to www.irs.gov/retirement-

² 88 FR 54511 (Aug. 11, 2023). Not all of the SECURE 2.0 provisions that affect ERISA's reporting and disclosure framework are covered in this RFI. For example, the changes to ERISA's audit requirements made by section 345 of SECURE 2.0 were implemented through a rulemaking relating to annual reporting requirements under ERISA. 88 FR 11793 (Feb. 24, 2023).

³ Section 319(a)(1)-(2) of SECURE 2.0 excludes health and welfare plans from the scope of the Agencies' review (directing agency heads to review the reporting and disclosure requirements of pension plans (as defined in ERISA section 3(2)) covered by title I of ERISA and applicable qualified retirement plans (as defined in Code section 4974(c), without regard to Code section 4974(c)(4) and (5), including a plan described in Code section 401(a) which includes a trust exempt from tax under Code section 501(a), an annuity plan described in Code section 403(a), and an annuity contract described in section Code section 403(b), but excluding plans described in Code section 408(a) or (b) and eligible plans described in Code section 457(b)).

plans/irc-notice-and-reporting-requirements-affecting-retirement-plans (Treasury Department), *www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/reporting-and-disclosure-guide-for-employee-benefit-plans.pdf* (Labor Department), and *www.pbgc.gov* (PBGC) to review the principal requirements of each Agency relating to reporting and disclosure under ERISA or the Code with respect to retirement plans.

ERISA and the Code require that plans furnish information to participants and beneficiaries, in some cases on a regular and recurring basis (*e.g.*, pension benefit statements,⁴ Code section 401(k)(12) safe harbor notices,⁵ and annual funding notices⁶) and in other cases when triggered by plan or participant actions (*e.g.*, black-out notices,⁷ Code section 402(f) notices,⁸ and notices of intent to terminate⁹). For purposes of this Request for Information (RFI), the term “disclosure” includes notices, statements, and other documents and refers generally to the furnishing of information to participants and beneficiaries of retirement plans as required by ERISA or the Code or regulations issued by the Agencies thereunder.

The term “reporting” is used in this RFI to refer to the furnishing of information, or “reports,” by plans to the Agencies, as required by ERISA or the Code, or regulations issued by the Agencies thereunder. The Agencies do not consider information that is submitted to the Agencies in connection with an audit, examination, investigation, or enforcement action to be “reports” for purposes of section 319. The Agencies also do not consider information that is furnished on a voluntary basis to an Agency to obtain favorable treatment, or information relating to financial transactions that is not retirement-plan-specific information to be “reports” for purposes of section 319. Examples of information not considered to be “reports” include:

⁴ ERISA section 105; 29 U.S.C. 1025.

⁵ Code section 401(k)(12); 26 U.S.C. 401(k)(12); 26 CFR 1.401(k)-3(d).

⁶ ERISA section 101(f); 29 U.S.C. 1021(f); 29 CFR 2520.101-5.

⁷ ERISA section 101(i); 29 U.S.C. 1021(i); 29 CFR 2520.101-3.

⁸ Code section 402(f); 26 U.S.C. 402(f); 26 CFR 1.402(f)-1.

⁹ ERISA section 4041(a)(2); 29 U.S.C. 1341; 29 CFR 4041.23.

- Information that is submitted as a condition of an individual exemption under ERISA section 408(a).
- Information that is submitted to the Agencies to receive financial assistance or benefits.
- Information that is submitted to the Agencies in connection with requests for determination or opinion letters, advisory opinions, information letters, private letter rulings, closing agreements, voluntary compliance statements under the Employee Plans Compliance Resolution System, or relief pursuant to the Voluntary Fiduciary Correction Program or the Delinquent Filer Voluntary Compliance Program.
- Information that is submitted to the Agencies and that is not specific to retirement plans, such as reporting that may be required of financial institutions holding foreign investments.

The Agencies recognize that a key component of retirement plans' reporting to the Agencies is the Form 5500 Annual Report. However, for purposes of this RFI, the Agencies are primarily focusing, and requesting comments, on reporting requirements other than the Form 5500 Annual Report. Apart from the context of SECURE 2.0 section 319, the Agencies have an annual process for soliciting feedback from the public on the Form 5500 Annual Report and reviewing and improving the effectiveness of that form in response to such feedback. The Agencies therefore pursue the overarching goal of the review required by section 319 – improving the effectiveness of reporting on the Form 5500 Annual Report – every year. The Agencies urge commenters, when responding to this RFI, to focus on information and analyses that look beyond the requirements of the Form 5500 Annual Report.

In addition to information received and points of view expressed by public commenters in response to this RFI, the Agencies' review for purposes of the report to Congress may include feedback from the public provided as part of prior efforts of the Agencies and others to assess and improve the effectiveness of the reporting and disclosure requirements of the Code and ERISA. The Labor Department, for example, as recently as 2019, published a request for

information (the DOL 2019 RFI), which solicited information, data, and ideas from the public on measures that the Labor Department could take to improve the effectiveness of plan disclosures, especially for the design and content of ERISA disclosures.¹⁰ Similarly PBGC, in 2017, published a request for information (the PBGC 2017 RFI), which, in part, solicited information and suggestions from the public for improving reporting requirements.¹¹

Parties external to the Agencies also have studied whether and how the reporting and disclosure frameworks of ERISA and the Code may be improved. The U.S. Government Accountability Office (GAO) has issued a number of reports in recent years on this topic, working with the Agencies to review reporting and disclosure requirements in different contexts.¹² The Labor Department’s ERISA Advisory Council has also analyzed reporting- and disclosure-related topics in certain years, in some cases providing testimony and recommendations to assist the Labor Department’s efforts.¹³ In addition, the Internal Revenue Service Advisory Council (IRSAC) provides recommendations to the IRS on reporting issues. The Agencies are confident that use of these resources, together with feedback from public commenters pursuant to this RFI, will facilitate the preparation of a comprehensive, insightful, and instructive report to Congress on the effectiveness of reporting and disclosure requirements.

II. Request for Information – SECURE 2.0 Section 319 – Effectiveness of Reporting and Disclosure Requirements.

¹⁰ 84 FR 56894, 56908 (Oct. 23, 2019).

¹¹ 82 FR 34619, 34620 (July 26, 2017).

¹² GAO-14-92, Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved (Nov. 2013); GAO-21-357, 401(k) Retirement Plans: Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them (July 2021); GAO-20-541, Retirement Security: DOL Could Better Inform Divorcing Parties About Dividing Savings (July 2020); GAO-19-179, Retirement Savings: Additional Data and Analysis Could Provide Insight into Early Withdrawals (Mar. 2019); GAO-18-111 SP, The Nation’s Retirement System: A Comprehensive Re-evaluation is Needed to Better Promote Future Retirement Security (Oct. 2017).

¹³ The ERISA Advisory Council (established under ERISA section 512) is comprised of 15 members of the public representing employee organizations, employers, and the general public. The Council holds public meetings, advises the Secretary of Labor, and submits annual reports detailing their recommendations to the Labor Department, including on the topic of reporting and disclosure. *See, e.g.*, ERISA Advisory Council Report, Mandated Disclosure for Retirement Plans – Enhancing Effectiveness for Participants and Sponsors (Nov. 2017); ERISA Advisory Council Report, Successful Plan Communications for Various Population Segments (Nov. 2013).

The purpose of this RFI, as explained in Part I, is to obtain input from the public on the effectiveness of the reporting and disclosure requirements of ERISA and the Code that the Agencies can consider in preparing the required report to Congress. Responses to this RFI also may be used as part of the public record for any future action taken by the Agencies to enhance such effectiveness. The Agencies invite comments and relevant data from all interested stakeholders. Commenters need not answer every question, but are encouraged to identify, by number, each question addressed. The Agencies request comments no later than 90 days from the date of publication of this document in the *Federal Register*, a timeframe that the Agencies believe is adequate for commenters to review the RFI and provide considered and timely responses.

A. Disclosure to Plan Participants and Beneficiaries.

The effectiveness of required notices and disclosures may be measured from different perspectives, including that of the retirement plan participants and beneficiaries who are the intended recipients of these disclosures and that of the plans and plan sponsors that provide disclosures. Section 319 of SECURE 2.0 acknowledges the importance of both perspectives by directing the Agencies to analyze ways to consolidate, simplify, standardize, and improve such requirements, so as to achieve the dual goals of “simplify[ing] reporting for, and disclosure from, [retirement] plans” and ensuring that “participants and beneficiaries timely receive and better understand the information they need to monitor their plans, plan for retirement, and obtain the benefits they have earned.” The questions in Part 1 of this Section A are primarily intended to elicit information about disclosures from the perspective of participants and beneficiaries. The questions in Part 2 of this Section A are primarily aimed at better understanding the perspective of plans and plan sponsors on furnishing required disclosures. The Agencies understand that the

distinction between these perspectives will not always be clear-cut, but nonetheless encourage commenters to consider the issues raised in this RFI from both perspectives when possible. Because plan officials and delegees (including plan fiduciaries, plan administrators, service and investment providers, and others) exercise important responsibilities in connection with plans' reporting and disclosure obligations, the Agencies' references in this RFI to "plans" include, unless otherwise specified, any such plan officials or delegees, to the extent they are responsible for, or are employed or hired to perform duties associated with, collecting and consolidating information and data and preparing and furnishing required notices and disclosures.

ERISA and the Code require plans to furnish information to participants and beneficiaries about the features of their plans (*e.g.*, eligibility requirements, contribution limitations, the availability of plan loans and distribution options) and plan benefits and rights under applicable law. Some disclosures are furnished on a regular and recurring basis, and others when triggered by plan or participant actions. For an individual participant or beneficiary, the number of disclosures that will be received depends on a number of factors, including the type of plan, its specific features, and whether certain actions are taken by the participant or beneficiary. One of the most significant disclosures under ERISA is the summary plan description (SPD). The SPD is the primary resource informing participants and beneficiaries about their plan and how it operates – an "owner's manual" for the plan.¹⁴ Other prominent disclosures under ERISA and the Code include pension benefit statements,¹⁵ ERISA's comparative investment chart,¹⁶ Code section 401(k)(12) safe harbor notices,¹⁷ defined benefit

¹⁴ 29 CFR 2520.102-3.

¹⁵ ERISA section 105; 29 U.S.C. 1025 (periodic statements of a participant's individual account balance or plan benefits).

¹⁶ 29 CFR 2550.404a-5 (annual comparative chart of fee, historical return, and other information about investment options in a participant-directed individual account plan).

¹⁷ Code section 401(k)(12); 26 U.S.C. 401(k)(12); 26 CFR 1.401(k)-3(d) (notice describing eligible employees' rights and obligations under a safe harbor section 401(k) plan).

plan annual funding notices,¹⁸ black-out notices,¹⁹ Code section 402(f) notices,²⁰ and notices of intent to terminate.²¹

1. *Plan Participants and Beneficiaries – Receipt and Comprehension of Required Disclosures.*

Question 1. *Number of required disclosures.*

Is the effectiveness of required disclosures from the Agencies affected by the number of notices and disclosures that are furnished to participants and beneficiaries each plan or calendar year (e.g., annual notices and quarterly benefit statements) and, if so, how? Similarly, is the effectiveness of disclosures affected by the number of notices and disclosures that are triggered by certain events (e.g., individual statements of deferred vested benefits²²), including when plans are required to furnish notices upon request from a participant or beneficiary? In your view, what is the relative significance of the required disclosures, are participants and beneficiaries able to recognize the significance of each notice or disclosure, and does this ability influence your view on how many disclosures should be required or whether certain disclosures are more or less effective? If you believe that the number of notices and disclosures is too high, what steps could the Agencies take to reduce the number of disclosures without sacrificing participants' and beneficiaries' receipt of important information? To the extent there are

¹⁸ ERISA section 101(f); 29 U.S.C. 1021(f); 29 CFR 2520.101-5 (provides basic information about the status and financial condition of a defined benefit pension plan).

¹⁹ ERISA section 101(i); 29 U.S.C. 1021(i); 29 CFR 2520.101-3 (notice of a temporary suspension or restriction on the ability of participants to direct plan investments, obtain loans, or take distributions).

²⁰ Code section 402(f); 26 U.S.C. 402(f); 26 CFR 1.402(f)-1 (written explanation provided to a recipient of an eligible rollover distribution).

²¹ ERISA section 4041(a)(2); 29 U.S.C. 1341; 29 CFR 4041.23. In the event a defined benefit plan is terminated by a standard or distress termination, the plan administrator must provide participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders, employee organizations representing participants, and PBGC (but only in the case of a distress termination), a written notice of intent to terminate (Form 500 for a standard termination, or Form 600 for a distress termination) at least 60 days, and no more than 90 days, before the proposed termination date.

²² Code section 6057(e); 26 U.S.C. 6057(e).

concerns with the number of disclosures, to what extent could these concerns be mitigated by combining multiple disclosures into a single mailing or delivery, or by consolidating information that currently must be furnished in multiple disclosures into a single disclosure? Are there specific disclosures, or specific information, that lend themselves to such a combination or consolidation, and, if so, why? For example, as explained in Q&A-8 of Department of Labor Field Assistance Bulletin No. 2008-03, the Labor Department, Treasury Department, and the IRS previously coordinated to ensure that plan sponsors could comply with the notice requirements of Code sections 401(k)(13)(E) (relating to Qualified Automatic Contribution Arrangements) and 414(w)(4) (relating to Eligible Automatic Contribution Arrangements) and ERISA sections 404(c)(5) (relating to Qualified Default Investment Alternatives) and 514(e)(3) (relating to preemption for Automatic Contribution Arrangements) with a single, stand-alone document (although plan sponsors are not required to combine those notices). Further, for plan sponsors that wish to combine those notices, the Labor Department, Treasury Department, and the IRS previously provided a sample notice that may be used to help a plan sponsor satisfy those notice content requirements. As another example, see § 54.4980F-1, Q&A-9(g)(3), in which a plan is treated as providing a section 204(h) notice if the plan administrator provides one of the notices listed in § 54.4980F-1, Q&A-9(g)(3)(ii) and meets the content and timing requirements for that notice.

Question 2. *Timing of required disclosures.*

Do the timing requirements for when certain disclosures must be furnished increase or decrease the likelihood that participants will pay attention to them? Should changes be made to when information is disclosed to participants and, if so, how? For example, to what extent would it be beneficial for plans to harmonize timing requirements to specific points in time corresponding to participants' major life milestones or events? Explain how such changes could

be implemented and how they would enhance the likelihood that participants would pay attention to the disclosure or disclosures or otherwise improve the disclosure experience.

Question 3. *Content of required disclosures.*

Is there duplicative, redundant, stale, or inconsistent information disclosed to participants under current rules promulgated under ERISA or the Code? If so, which information? Why do you consider that information duplicative, redundant, stale, or inconsistent? Do either ERISA or the Code, or regulations issued thereunder, currently require disclosure of any information that is unhelpful or outmoded, for example, due to the passage of time or changes in the regulatory, business, or technological environment? If so, what information and why is it unhelpful or outmoded? Is there information that should be disclosed instead of the unhelpful or outmoded information? If so, what information? How could it be improved? In analyzing the content of required disclosures, commenters are reminded to consider the objective stated in SECURE 2.0 section 319, that participants and beneficiaries be furnished the “information they need to monitor their plans, plan for retirement, and obtain the benefits they have earned.”

Question 4. *Comprehension of information furnished in required disclosures.*

Section 319 of SECURE 2.0 requires that the Agencies’ report to Congress include an analysis of “the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures.” As to individuals’ understanding, the Agencies are interested in commenters’ views on whether and how the length of specific disclosures, and the complexity of the information disclosed, may impact individuals’ understanding of the disclosures. Besides length, what other factors affect comprehension of the information contained in notices and disclosures or, possibly, whether participants and beneficiaries even try to read and understand disclosures? Does review and comprehension of participants and beneficiaries vary among: (1) industries; (2) individuals of different ages, genders, education

levels, socio-economic classes, place of living, impairments or disabilities, or other demographic characteristics; or (3) different types of disclosures? To what degree does the presentation, delivery, and design of disclosures (as opposed to their written content) impact the likelihood that participants and beneficiaries will read and understand the information disclosed? Are there design elements or tools that are particularly effective, for example, mixed media presentations, the use of social media, or plain language infographics? If so, should these presentation and design elements be required, or are there steps that could be taken to facilitate use of those methods? Are participants and beneficiaries regularly surveyed or otherwise assessed regarding their comprehension of information about their plans? How are those surveys or reviews conducted? What additional information should be considered in developing disclosures that are effective for different participants and beneficiaries? How can the Agencies effectively measure the extent to which participants and beneficiaries understand the information that is disclosed to them?

Question 5. *Plain English; foreign language-based issues; underserved communities.*

Information disclosed to participants and beneficiaries is often quite technical and complex. However, for disclosures to be useful, information needs to be conveyed in “plain language” – in a way that is understandable to a highly demographically diverse population of workers and their beneficiaries. Labor Department disclosures, for example, generally are required to be “written in a manner calculated to be understood by the average plan participant.”²³ Similarly, certain PBGC notices to affected parties must be “readable and written

²³ See, e.g., ERISA section 105(a)(2)(A)(iii); 29 U.S.C. 1025(a)(2)(A)(iii) (applying the readability standard to pension benefit statements). See also 29 CFR 2520.102-2(a) (applying the readability standard to summary plan descriptions). The readability standard requires plan administrators to exercise considered judgment and discretion, taking into account factors such as the level of comprehension and education of a plan’s participant population and the complexity of a plan’s terms. Consideration of such factors usually compels plan administrators, for example, to write notices that limit or eliminate technical jargon and long, complex sentences, and that use clarifying examples and illustrations, clear cross references, and tables of contents. *Id.*

in a manner calculated to be understood by the average plan participant.”²⁴ Also, the Treasury Department and the IRS require that notices to participants and beneficiaries be written in a manner calculated to be understood by the average plan participant.²⁵ Are these standards sufficient to ensure that notices and disclosures are likely to be comprehensible to participants and beneficiaries and, if not, what additional or different standards would enhance individuals’ understanding? Further, not all workers speak English or speak English only as a second (or further removed) language. Some of the Agencies’ disclosures are subject to standards as to the use of additional languages. Are these standards sufficient?²⁶ If not, what barriers to comprehension exist for non-native English-speakers, and what further steps could the Agencies take to reduce these barriers? Do plans take additional steps, in addition to what is required by ERISA and the Code, to educate or tailor disclosures to their participant populations? Is there existing research, user testing, or other considerations that the Agencies should review or steps they could take to increase the effectiveness of disclosures to participants and beneficiaries in underserved communities?

Question 6. *Accessing required disclosures.*

As noted in Question 4, section 319 of SECURE 2.0 requires that the Agencies’ report to Congress include an analysis of “the rate at which participants and beneficiaries are receiving, *accessing*, understanding, and retaining disclosures.” (Emphasis added.) The Agencies understand “access” to refer to the extent to which participants and beneficiaries open and look at, review, or consult the disclosure for purposes of using its information, either

²⁴ 29 CFR 4041.3(c)(4).

²⁵ See, e.g., 26 CFR 54.4980F-1, Q&A-11(a)(2) (information in a section 204(h) notice must be written in a manner calculated to be understood by the average plan participant); 26 CFR 1.401(k)-3(d)(2)(i)(B) (providing that the safe harbor notice must be written in a manner calculated to be understood by the average employee).

²⁶ See, e.g., 29 CFR 2520.102-2(c) (describing standards for summary plan descriptions furnished to plan participants literate in a non-English language and assistance that must be provided to non-English speakers to inform them of their rights and obligations under the plan); 29 CFR 4041.3(c)(5).

contemporaneous with the receipt of the disclosure or at any point in the future. What tools, if any, do entities have to discern whether participants and beneficiaries are accessing disclosures? Do individuals commonly access disclosures only on receipt, at regular intervals throughout the year, or only at specific points in time corresponding to major life milestones (*e.g.*, marriage, divorce, childbirth, adoption, retirement, or job change)? Do participants and beneficiaries access disclosures more or less frequently depending on how the disclosures are furnished, for example, whether they receive paper disclosures in the mail, electronic disclosures via email, text messages, mobile applications, or notifications of disclosures' availability on a continuous-access website? Do they access certain disclosures at higher rates than others? What are best practices in ensuring that participants and beneficiaries have ready access to relevant information at the time they need it, and that they know they have such access?

Question 7. *Retaining disclosures after receipt.*

As noted in Question 4, section 319 of SECURE 2.0 requires that the Agencies' report to Congress include an analysis of "the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures." As to retention of disclosures, do plans collect data or conduct surveys on how often participants and beneficiaries download, print, save, or otherwise "retain" disclosures for future use? If so, how, and are any trends evident from such data? Does data exist on how often participants and beneficiaries request copies of disclosures, for example, do they often request paper disclosures to be re-mailed or electronic versions of disclosures to be re-sent via email, text, or mobile application, and, if so, are any trends evident from such data? To what extent, if any, does the ability of plan participants to access plan-related information online, such as through a continuous access secure website, impact conventional retention behavior? What methodologies exist, or are in development, for measuring retention of disclosures by participants and beneficiaries?

Question 8. *Participant and beneficiary engagement; decision-making.*

Do plans collect data on participant and beneficiary levels of engagement in response to participant notices and disclosures and, if so, what data is collected, and how is “engagement” defined and determined? What impediments, if any, prevent or dissuade plans from collecting such data? If such data is collected, do plans act in response to such data and, if so, are there illustrative examples? For example, are there circumstances when plans act based upon evidence of a participant’s lack of engagement? To the extent sensitive or confidential information may be used in efforts to enhance engagement with participants and beneficiaries, do best practices exist for plans to ensure that such information is accessible but is not inappropriately used or disclosed to other parties? Do plans collect data on the extent to which disclosures impact participant and beneficiary behavior and decision-making? If so, how is this impact assessed? Is certain information or are certain disclosures more likely to elicit engagement or modify individuals’ behavior? If so, which information or disclosures, and how? Do plans and plan service providers have ready access to information on when or how often plan participants and beneficiaries visit a plan’s website or open plan-related emails or text messages? Are there any impediments to plans collecting and considering such information in assessing engagement and effectiveness? If so, what are those impediments?

2. *Plans, Plan Administrators, and Plan Service Providers – Furnishing Required Disclosures.*

Question 9. *Provision of preferred contact information to plans.*

Section 319 of SECURE 2.0 requires that the Agencies’ report to Congress include an analysis of “how participants and beneficiaries are providing preferred contact information.” Given the fact-based nature of this analysis, the Agencies request data, statistics, or other information from plans about whether, when, how, and for what reasons (*e.g.*, upon hire or plan

eligibility, residential move, physical or mental impairment, marriage or divorce) participants and beneficiaries communicate and update their contact information for plan purposes. For example, new employees or participants may indicate their preferred contact information in plan enrollment materials, and existing employees and existing participants may update their preferred contact information directly on a plan's website, a plan recordkeeper's website, a mobile application, or the plan sponsor's human resources or other database, or by contacting the plan sponsor directly. Likewise, some employees, participants, and beneficiaries may need to provide and update contact information on file with their employer, their unions (if collectively bargained), and other plans that may be administered by different recordkeepers or other entities. Do plans remind employees, participants, and beneficiaries to check the accuracy of their contact information and update as necessary and, if so, when, and how? Are there circumstances when plans check the accuracy of a participant's or beneficiary's contact information, and, if so, under what circumstances; how are such checks performed? Are there observable trends in this data, for example, changes in response to Agency regulatory or other actions or changes in the retirement plan industry?

Question 10. *Delivery - furnishing disclosures to participants and beneficiaries.*

Section 319 of SECURE 2.0 requires that the Agencies' report to Congress include an analysis of both "the methods by which plan sponsors and plans are furnishing disclosures" and "the rate at which participants and beneficiaries are *receiving*, accessing, understanding, and retaining disclosures." (Emphasis added.) Each Agency has specific guidelines as to methods by which plans may furnish disclosures to participants and beneficiaries, including the circumstances in which disclosures may be furnished electronically (*e.g.*, via email, website access, mobile and smartphone applications, or audio and video channels), rather than on

paper.²⁷ As information technology evolves, so might the standard for “effective” delivery of information to participants and beneficiaries. Are there certain disclosures that participants and beneficiaries prefer to receive on paper (*e.g.*, highly individualized and complex notices, such as quarterly and annual benefit statements), and, if so, what explains this preference? Commenters are encouraged to provide data, statistics, or other information about which delivery methods are most commonly used by plans and factors that may explain participants’ preferences for certain delivery methods. For plans that deliver disclosures electronically, does data exist on participant opt-in and opt-out rates, practices, and trends in such rates? Do plans regularly reassess compliance with applicable electronic delivery standards or survey plan participants and beneficiaries regarding their preferences for how to receive information from their plans? Do plans periodically evaluate whether disclosures are successfully received by participants and beneficiaries and, if so, how? What data exists about rates of receipt? Are there observable trends in this data, for example, in response to Agency regulatory or other actions, changes in participant and beneficiary preferences, technological advances, or changes in the retirement plan industry? To what extent are age, demographics, or residence relevant to participants’ and beneficiaries’ effective access to and use of electronic means of delivery? If these variables are relevant, what are best practices for addressing differential use of and access to electronic disclosures?

Question 11. *Availability of model notices or model language.*

In some cases, the Agencies offer, or are required by statute to provide, model notices or model language that can be used by plans or plan administrators to satisfy the content

²⁷ 29 CFR 2520.104b-31 (the Labor Department’s 2020 safe harbor); 29 CFR 2520.104b-1 (the Labor Department’s 2002 safe harbor); 26 CFR 1.401(a)-21 and § 54.4980F-1, Q&A-13 (Treasury Department guidance); 29 CFR part 4000, subpart B (PBGC issuance rules).

requirements of required disclosures.²⁸ To what extent does the provision of models reduce the cost to plans for preparing required disclosures? The Agencies generally provide model notices or language in English; what are commenters' views on the Agencies' provision of model notices or language in one or more languages other than English and how to determine which languages? To what extent does the provision of such models impact the understanding and retention of the disclosure by a participant or beneficiary? Are there additional model notices or model language that the Agencies could provide for specific disclosures that would be especially helpful to plans or that would reduce the burden on plans to prepare such disclosures?

Question 12. *Participant and beneficiary feedback regarding notices and disclosures.*

Please describe the extent to which plans receive questions from, or are made aware of concerns from, individuals who receive required notices and disclosures regarding those communications. What procedures are in place to respond to such questions and concerns? Are there common themes in the types of issues that result in inquiries from participants and beneficiaries? Is there any notable difference in the types of questions and concerns that are raised by telephone, by email, or otherwise?

Question 13. *Costs of disclosure.*

What is the aggregate annual cost to defined contribution and defined benefit plans to make required disclosures? Are costs significantly higher for certain disclosures than others and, if so, which disclosures and why? To what extent are these disclosure costs paid from plan assets or from the general assets of a plan sponsor? Are there ways to lower disclosure costs without negatively impacting the comprehensiveness or effectiveness of the information that is

²⁸ See, e.g., 29 CFR 2520.101-3(e)(2) (model notice of blackout periods under individual account plans); 29 CFR 4041.23(b) and 4041.43(b) (model notices of intention to terminate plan); IRS Notice 2020-62, 2020-35 IRB 476, (model Code section 402(f) notices).

required to be disclosed? Commenters are encouraged to provide any data relevant to these questions.

B. Reporting to the Agencies.

As with required disclosures, the effectiveness of required reporting to the Agencies can be measured from different perspectives. Section 319 of SECURE 2.0 explicitly refers to “simplify[ing] reporting for...plans,” evidencing concern for plans’ perspectives. But the effectiveness of the Code’s and ERISA’s reporting requirements also may be evaluated from the perspectives of the Agencies receiving required reports, the participants and beneficiaries of reporting plans, and third parties who may be able to aggregate and use reported information to inform academic, industry, participant advocacy, or other work. Each of these perspectives is raised below.

1. *Submission of Required Reports by Plans.*

Question 14. *Frequency and timing of reports.*

What is your view on the number of reports that must be filed with the Agencies each plan or calendar year and how this number impacts a plan’s ability to implement reporting procedures efficiently? Are the timing requirements of any reports in conflict or inefficient, either for one Agency or across the Agencies? Could the filing deadlines for any reports, either for ERISA or the Code or both, be modified to allow consolidation of more than one report without compromising the Agencies’ timely receipt of information?

Question 15. *Content of reports.*

Please describe the extent to which any of the reports required by ERISA or the Code collect more, or less, information than you believe should be necessary for the Agencies to discharge their oversight and other responsibilities? If so, which reports, and how could they be modified to inform the Agencies more effectively? Do any challenges exist in obtaining information from sources subject to laws other than the Code and ERISA (*e.g.*, Federal securities laws or State insurance laws) that is necessary, or helpful, for preparation of reports?

Question 16. *Clarity of reporting requirements.*

Are the instructions for reports clear and helpful? Are there particular reports for which the instructions could be simplified or could more accurately reflect the administration of retirement plans? Should the Agencies make instructions available in languages other than English? Should instructions be written subject to a readability standard, such as in a manner reasonably calculated to be understood by the target filers (for example large companies versus small employers)?

Question 17. *Efficacy of filing methods for reports.*

Do the filing methods for reports need updating or improvement? For reports that must be filed electronically, are there circumstances when plans would benefit from waiver procedures permitting paper filings and, if so, what plans, what reports, and what circumstances? Alternatively, are there reports that must be filed on paper that would be more effectively filed electronically, and, if so, as a mandate or as an option?

Question 18. *Improving Agency assistance with reporting requirements.*

Are the Agencies' customer service personnel and capabilities sufficient or in need of improvement for the questions about the content of reports, technical support for completing and filing reports, or otherwise? Should the Agencies monitor, track, and disclose user experience

for any reports? If so, how should the Agencies compile this data and use it to inform improvements to customer service protocols, including technical support?

Question 19. *Costs of reporting.*

What is the aggregate annual cost to defined contribution and defined benefit plans to submit reports required by ERISA and the Code? Are costs significantly higher for certain reports than others and, if so, which reports, and why? To what extent are such reporting costs paid from plan assets versus from the general assets of the plan sponsor? Commenters are encouraged to provide any data relevant to these questions.

2. *Participants, Beneficiaries, and Third Parties – Use of Publicly Available Information and Data.*

Question 20. *Use of reports and data by participants and beneficiaries.*

Is there information reported to the Agencies, but not affirmatively required to be furnished by plans to participants and beneficiaries, that might be beneficial to participants and beneficiaries? If so, what information and to what benefit? Could such information be furnished in a cost-effective manner or made available to participants and beneficiaries? If so, please describe these methods and how they could be cost effective. Is there evidence that participants and beneficiaries request to review any reports (or certain information or data) that is reported?

Question 21. *Use of reports and data by other entities.*

Do any of the reports required by ERISA and the Code fail to collect information that data users other than the Agencies, including the public at large, data aggregators, and participant advocates, would find useful? If so, which reports and information, and how could reports be modified to collect this information in a cost-effective manner? How would this information be

used and how would requesting this information benefit retirement plan participants and beneficiaries, plans, or others? What information should be publicly available, and, if so, how might confidentiality, security, or other concerns be managed (e.g., protection of return information as required by Code section 6103)? To what extent do plans and plan service providers give third parties, such as data aggregators and consultants, access to plan data (e.g., plan investment lineups and associated fees, costs, and performance data) that could facilitate the development of analytic tools and comparative analyses that could be used by plan fiduciaries, participants, or beneficiaries to improve retirement outcomes? Are there impediments to the disclosure of useful plan data to such third parties that are inappropriate or that interfere with the cost-effective delivery of such analytic tools or comparative analyses?

C. Additional Questions.

Question 22. *Coordination of Agencies' reporting and disclosure requirements.*

Would participants, beneficiaries, and plans benefit from increased coordination between the Agencies regarding one or more reporting or disclosure requirements and, if so, how? What steps could the Agencies take to achieve such coordination, for example, which specific disclosures, reports, or information could be effectively harmonized by the Agencies and how could the Agencies do so in a cost-effective manner?

Question 23. *Alternative methods for information collection.*

SECURE 2.0 section 319(b)(3) explicitly provides that the Agencies may “conduct appropriate surveys and data collection to obtain any needed information.” If this authority were used, what data or information should be collected, and what are cost-effective methods that the Agencies could employ to collect such data or information, for example, by consulting with a

balanced group of participant and employer representatives, conducting focus groups, preparing surveys, or holding a joint hearing?

Question 24. *Additional information.*

Is there any information or are there any suggestions that the Agencies should consider that are not addressed by the questions in this RFI and that may be important to achieve the desired effectiveness of reporting and disclosures as set forth in SECURE 2.0 section 319?

Signed at Washington, DC.

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